IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 432 of 2003

Date of Decision: 7.3.2006

Oriental Insurance Company …Appellant.

Versus.

Mahantu Devi & anr. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr.Lalit Sharma, Advocate.**

For the Respondent(s): **M/s Yoginder Paul and Dinesh K.Sharma, Advocates for respondent No.1.**

Deepak Gupta, J. (Oral).

This appeal by the Insurance Company is directed against the award of the Commissioner under the Workmen's Compensation Act, Arki District Solan, in Case No. 7/2001 decided on 8.7.2003.

At the time when notice of the appeal was issued or when the appeal was admitted, specific substantial questions of law have not been framed. However, from the order dated 8.9.2003, it is apparent that the appeal has been entertained on the following substantial question of law:-

1. Whether the Insurance Company can be made liable to pay the penalty in view of the decision of the Supreme

Court in **Ved Prakash Garg** versus. **Premi Devi and others,** (1997) 8 SCC 1 ?

2. Whether the compensation has been calculated in accordance with the provisions of the Workmen's Compensation Act?

As far as the first question is concerned, there is no dispute with regard to the fact that the Insurance Company cannot be held liable to pay the penalty in view of the decision of the Apex Court. Therefore, the direction of the Commissioner that in case the entire amount is not deposited within 30 days from the date of order then the Insurance Company shall be liable to pay 30% as penalty is bound to be set aside and is accordingly set aside.

The other question is with regard to the income of the deceased. In the claim petition, it was alleged that the claimant was getting salary of Rs. 5000/- per month and Rs.100/- per day as daily allowance i.e. Rs.8000/- per month in all. The owner in his reply has admitted this fact. This fact was also stated by mother Smt. Mahantu Devi in her statement while appearing as PW1. This fact is also proved by the statement of Chaman Lal PW2, who states that he is the owner of some other truck and according to him, normal salary of a conductor is between Rs.5000/- to Rs.8000/- per month. The Insurance Company has relied upon the evidence of Phul Prakash who was the Investigator appointed by it. According to him Devi Ram owner had stated to him that he was paying only Rs.700/- per month plus Rs.150/- as daily expenses. If the daily expenses are

taken into consideration, the salary comes to more than Rs.4000/-. Even other wise, I feel that the photo copies of the documents produced by the witness could not have been exhibited. Furthermore, the Insurance Company could have summoned Devi Ram to prove the salary. In any event, this is a pure question of fact and not a question of law.

In view of the above, the appeal of the Insurance Company is partly allowed and the order of the Commissioner, Workmen's Compensation is modified in so far as it holds the Insurance Company liable to pay the penalty as aforesaid.

CMP No.781/03.

In view of the orders passed in the main appeal, the CMP is dismissed.

March 7, 2006. (Deepak Gupta),
s. Judge.